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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,275	01/19/2001	Toshio Kobayashi	SHC0104	1331

7590

02/27/2003

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 02/27/2003

60

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/766275

Applicant(s)

Kobayashi et al.

Examiner

John Guzmello

Group Art Unit

1991

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on 12/12/2002.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-6 is/are pending in the application.
- Of the above claim(s) 4,5 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-3, 6 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

15. The Examiner acknowledges paper # 9 of 12/12/2002, the amendment.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

17. Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strack et al. 5,681,645 in view of Morman 5,116,662.

Strack describes laminate material with stretchability and recovery, breathability and barrier properties, (see abstract). Strack describes a non-woven web elastomeric web having at least one web of textile material discontinuously bonded to each side, (see abstract). Strack describes the laminate with at least two textile webs, a non-elastic textile web with stretch and recovery characteristics, and a textile web with non-woven elastomeric web properties,

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(column 5, lines 58-67). Strack describes the various kinds of elastomeric web materials, (column 6, lines 22-67). Strack describes the use of adhesive which laminates the webs together so that the elasticity of the laminate will not be interfered, i.e., interfere with recoverability, (column 9, lines 35-61). Strack describes the use for the laminate, garment with thermal insulation and a dirt barrier to protect the wearer, while having breathability for comfort, (column 11, lines 42-46). Strack differs from the claimed invention because it is silent about orthogonal stretchability and the amounts of the components of the ethylene polymer.

Morman describes multi-direction stretch composite elastic material including at least one elastic sheet which means that the sheet is elongatable about 60%, i.e. stretched, (column 1, lines 60-68). Morman describes “nonelastic” as not falling in the definition of elastic, (column 2, lines 11-14). Morman describes a composite material which refers to at least one sheet which is stretched and one necked (non-elastic) material, which are joined together in at least three locations corresponding to the instantly claimed

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binding spots, (column 3, lines 30-45). Morman describes elastic sheets, (column 7, lines 57-68; column 8, lines 1-63). Morman describes the non-elastic materials are nonwovens made of polyolefins and similar polymers including ethylene copolymers, (column 4, lines 44-64).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Strack with the web material of Morman so that the necked material, see Figure 2B, that the binding spots correspond between the sheet and the fibrous assembly and are similar in effect to the bonding locations of the two layers of elastic and non-elastic sheet motivated with the expectation that improved properties of resilience and stretch and recovery, (column 4, lines 67-68), are evident when the binding spots overlap. Regarding the composition of the ethylene copolymer Morman describes blends of polyolefin material which is incorporated by reference in 4,663,220 (column 11, lines 55-68; column 13, lines 40-57; of '220), which when blended under appropriate conditions, (column 8, lines 34-49) one of ordinary skill in the art would be able to optimize the amounts of the ethylene

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propylene butene copolymers to join the two layers. Regarding orthogonality it would have been obvious to one of ordinary skill in the art to approximate motivated with the expectation that Strack describes (machine and cross direction, column 9, lines 14-23, corresponding to orthogonal stretchability) power recoverability is added to the materials to the extent they stretch, (column 9, lines 18-19).

Applicant's arguments regarding the rejection of record have been considered but are not germane with the new grounds of rejection. It is the Examiner's position that the invention taken as a whole with the new grounds of rejection would be obvious to one of ordinary skill in the art.

### ***Double Patenting***

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir.

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1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 1-3, 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 09/941566. Although the conflicting claims are not identical, they are not patentably distinct from each other

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because it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the correspondence of the relative binding spots of the elastic sheet of '566 in reference to the inelastic fibrous sheet so that the bonding zones (similar to binding spots) would be expected to improve the the similar properties of flexibility, see abstract.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

20. Claims 1-3, 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 09/812299. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the correspondence of the bonding areas of the elastic sheet in reference to the fibrous layer of inelastic fibers such that the flexibility would be an improvement regarding the claimed



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invention. '299 describes the similar components of elastic material and inelastic material, see claims 1-3 of '299.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Since no terminal disclaimers have been submitted the double patenting rejections are maintained.

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 2002/0053755, Kobayashi et al. Describes a composite web and it cited for interest as being pertinent to the claimed subject matter .

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris , can be reached on (703) 308-2414. The

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fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

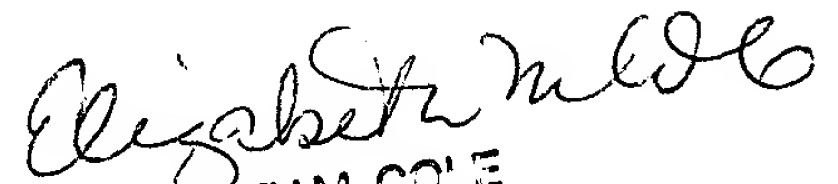
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

February 13, 2003



ELIZABETH M. COLE  
PATENT EXAMINER